HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.52 of 2007

Between:

Abhyudaya Dwakra Group, Machilipatnam,
represented by its President. …Appellant

And

Revenue Divisional Officer,
Machilipatnam Division,
Machilipatnam, Krishna District. …Respondent.

:: J U D G M E N T ::

Counsel for the appellant : Sri Kowturu Vinaya Kumar

Counsel for the respondent : Government Pleader for Civil Supplies.

19th January, 2007

Per G.S. SINGHVI, C.J.

Having failed to persuade the learned Single Judge to stultify the process initiated by Revenue Divisional Officer, Machilipatnam Division, Machilipatnam, Krishna District (the respondent herein) for appointment of permanent fair price shop dealer for Fair Price Shop No.6, Machilipatnam Town and Mandal, the appellant has preferred this appeal.

A perusal of the record shows that by an order dated 20th October, 2001, the respondent appointed the appellant as fair price shop dealer for the shop in question on temporary basis because the dealer, who was running the shop, had resigned. On the basis of that order, the appellant has been running the fair price shop.

The appellant challenged notification dated 29-9-2006 issued by the respondent for appointment of permanent fair price shop dealer primarily on the ground of violation of Clause 5(1) of the Andhra Pradesh Public Distribution System Control Order, 2001 (for short, 'the 2001 Order').

In the affidavit filed by Smt.A.Srihari, President of the appellant, it was averred that the group has been running the shop for the last more than five years and, therefore, there is no justification to appoint another dealer.

Before the learned Single Judge, it was argued that the shop ought to have been reserved for the petitioner and there is no justification to appoint a new dealer on the premise that the same is earmarked for Scheduled Tribe. The learned Single Judge dismissed the writ petition by observing that the petitioner's group does not have any Scheduled Tribe member and, as such, it is not eligible to compete for appointment as fair price shop dealer on permanent basis.

Sri Kowturu Vinaya Kumar relied on Clause 5(1) of the 2001 Order and argued that the respondent is bound to convert the

temporary appointment of the appellant into permanent because it comprises of women, who are entitled to preferential treatment in the matter of appointment as fair price shop dealer.

We have considered the submission of the learned counsel, but have not felt persuaded to accept the same. Clause 5(1) of the 2001 Order reads as under:

> "**(5) Issue of authorization to fair price shops and establishment:-**
>
> (1) With a view to controlling and ensuring proper distribution of scheduled commodities owned by the State Government, the appointing authority may issue authorizations to fair price shops owned by the State Government or any State Government undertaking or any public institution or persons including women or Development of Women and Children in Rural Areas group (DWCRA) or registered women voluntary consumer organizations or thrift groups like Podupu Lakshmi or Co-operative societies which are run exclusively by women (which have only women as members) either wholly or partly, subject to such preferences and reservations as may be prescribed by Government from time to time in this regard to obtain and supply scheduled commodities in accordance with the provisions of this order.
>
> Provided that the said authorization shall cease to be valid when the Government undertake running of the authorized fair price shop either by themselves or through a Government undertaking or a corporation wholly owned by the Government or a Co-operative Society for the benefit of Scheduled Castes or Scheduled Tribes under a Government Scheme.
>
> Provided further that the State Government may, in the public interest, replace all or any of the fair price shop dealers and entrust the distribution through a shop set up by the State Government, a State Government undertaking or a Corporation wholly owned by the State Government or a Co-operative Society for the benefit of Scheduled Castes or

Scheduled Tribes under a Government Scheme.

Provided also that any person dealing in the same commodities obtained otherwise than through Government for supply through Public Distribution System either in his own name or in the name of any member of his family shall not be issued authorization to run the fair price shop and the Government, in cases where the fair price shop dealer has also got a licence in his own name or in the name of any of his family member to deal with the same commodities, obtained otherwise than through the Government for sale to consumers through Public Distribution System, cancel the authorization.

Provided also that every fair price shop dealer should give an undertaking to the appointing authority concerned that he or she would relinquish the dealership if he or she is elected to any public office."

A reading of the above reproduced provision makes it clear that the same vests discretion with the government or the appointing authority to give preference to any public institution or person including women or Development of Women and Children in Rural Areas group like Podupu Lakshmi or co-operative society in the matter of appointment as dealer. This provision cannot be read as conferring a right on the appellant to seek permanent appointment as dealer of the fair price shop. Therefore, we do not find any justification to entertain the appellant's prayer for issue of a mandamus to the respondent to appoint it as permanent fair price shop dealer in respect of the shop in question.

We are further of the view that without successfully challenging notification dated 29-9-2006 on the ground that the shop in question cannot be reserved for Scheduled Tribe, the appellant is not entitled to seek a direction for its permanent appointment as fair price shop dealer.

For the reasons stated above, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.81 of 2007 filed by the appellant for impleadment of Smt.Sala Siva Parvathi as respondent No.2 is disposed of as infructuous and WAMP.No.82 of 2007 seeking interim direction is dismissed.

G.S.SINGHVI, C.J.

19th January, 2007

C.V.NAGARJUNA REDDY, J.

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